

Introduced by Senator Denham

February 16, 2005

An act to amend Section 987 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 313, as introduced, Denham. Criminal procedure.

Existing law provides that if the defendant in a noncapital case desires and is unable to employ counsel, the court shall assign counsel to defend him or her, as specified.

This bill would make a technical, nonsubstantive change to this provision.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 987 of the Penal Code is amended to
2 read:

3 987. (a) In a noncapital case, if the defendant appears for
4 arraignment without counsel, he or she shall be informed by the
5 court that it is his or her right to have counsel before being
6 arraigned, and shall be asked if he or she desires the assistance of
7 counsel. If he or she desires and is unable to employ counsel, the
8 court shall assign counsel to defend him or her.

9 (b) In a capital case, if the defendant appears for arraignment
10 without counsel, the court shall inform him or her that he or she
11 shall be represented by counsel at all stages of the preliminary
12 and trial proceedings and that the representation is at his or her
13 expense if he or she is able to employ counsel or at public

1 expense if he or she is unable to employ counsel, inquire of him
2 or her whether he or she is able to employ counsel and, if so,
3 whether he or she desires to employ counsel of his or her choice
4 or to have counsel assigned, and allow him or her a reasonable
5 time to send for his or her chosen or assigned counsel. If the
6 defendant is unable to employ counsel, the court shall assign
7 counsel to defend him or her. If the defendant is able to employ
8 counsel and either refuses to employ counsel or appears without
9 counsel after having had a reasonable time to employ counsel,
10 the court shall assign counsel.

11 The court shall at the first opportunity inform the defendant's
12 trial counsel, whether retained by the defendant or
13 court-appointed, of the additional duties imposed upon trial
14 counsel in any capital case as set forth in paragraph (1) of
15 subdivision (b) of Section 1240.1.

16 (c) In order to assist the court in determining whether a
17 defendant is able to employ counsel in any case, the court may
18 require a defendant to file a financial statement or other financial
19 information under penalty of perjury with the court or, in its
20 discretion, order a defendant to appear before a county officer
21 designated by the court to make an inquiry into the ability of the
22 defendant to employ his or her own counsel. If a county officer is
23 designated, the county officer shall provide to the court a written
24 recommendation and the reason or reasons in support of the
25 recommendation. The determination by the court shall be made
26 on the record. Except as provided in Section 1214, the financial
27 statement or other financial information obtained from the
28 defendant shall be confidential and privileged and shall not be
29 admissible in evidence in any criminal proceeding except the
30 prosecution of an alleged offense of perjury based upon false
31 material contained in the financial statement. The financial
32 statement shall be made available to the prosecution only for
33 purposes of investigation of an alleged offense of perjury based
34 upon false material contained in the financial statement at the
35 conclusion of the proceedings for which the financial statement
36 was required to be submitted. The financial statement and other
37 financial information obtained from the defendant shall not be
38 confidential and privileged in a proceeding under Section 987.8.

39 (d) In a capital case, the court may appoint an additional
40 attorney as a cocounsel upon a written request of the first

1 attorney appointed. The request shall be supported by an affidavit
2 of the first attorney setting forth in detail the reasons why a
3 second attorney should be appointed. Any affidavit filed with the
4 court shall be confidential and privileged. The court shall appoint
5 a second attorney when it is convinced by the reasons stated in
6 the affidavit that the appointment is necessary to provide the
7 defendant with effective representation. If the request is denied,
8 the court shall state on the record its reasons for denial of the
9 request.

10 (e) This section shall become operative on January 1, 2000.

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